

recommendations late in the year for the long session in 2007, and added that the Committee is to report on or before December 31, 2006.

Cochair Hackney reminded the members that the Committee had been charged with looking at the process for judicial review of the merits of constitutional claims in State post-conviction and federal habeas corpus proceedings.

Mr. Hal Pell, Committee Counsel, was recognized to comment on the Judicial Review of Death Penalty Cases chart showing the steps in the appellate process that had been distributed to the members.

Mr. Barry McNeill, Special Deputy Attorney General, North Carolina Department of Justice was recognized. Mr. McNeill discussed the process that death penalty cases go through and the way that his office is set up to handle those cases. He said that in North Carolina, the average time from the time that a defendant has received the latest sentencing until the time an execution is carried out is ten years and four months. He noted that the national average is very much the same. Mr. McNeill said that the answer as to why it takes this much time lies in the process that is often referred to as “super due process.” He said that the current death penalty statute that was enacted in 1977 and amended in 1996, attempts to provide a defendant with one full and complete round of going through not only the direct appeal, but also the motion for appropriate relief, review of that motion for appropriate relief in the North Carolina Supreme Court by petition for Writ of Certiorari, and sometimes a petition to the United States Supreme Court for a second-time review of the post-conviction proceedings in state court. He said the case then moves to the next stage called the federal Habeas Corpus stage which is a federal post-conviction proceeding. From there, a case goes on appeal to the U. S. Court of Appeals for the Fourth Circuit and back to the U. S. Supreme Court again.

Mr. McNeill said that in order for a case to get to the post-conviction stage, it must first get through direct review by the North Carolina Supreme Court and the U.S. Supreme Court. According to the latest available numbers (2003), the North Carolina Supreme Court sent back death penalty cases 42% of the time for resentencing, and 14% of the time for new trials in the over 400 cases they reviewed. He added that the 42% was misleading because approximately 44 cases had to go back for resentencing as a result of McCoy, leaving a more accurate figure of 16% for the rate of reversal by the North Carolina Supreme Court on direct appeal for resentencing.

Mr. McNeill called attention to a handout that was distributed, and highlighted several things in the report. He stated that in the post-conviction stage a defendant is statutorily afforded two attorneys at which point the Capital Litigation Section of the Office of the Attorney General ordinarily becomes involved. He noted that they try to keep a local prosecutor involved, if possible. He said that last year, the office filed 18 answers to motions for appropriate relief and handled 5 evidentiary hearings in MAR matters, 2 Federal evidentiary hearings and 6 appeals to the U.S. Court of Appeals for the Fourth Circuit. He said that their section currently has 161 cases that are divided between